

PETITION FOR REHEARING

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# United States Court of Appeals

NINTH CIRCUIT

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NO. 20514

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FILED  
OCT 11 1966  
WM. B. LUCK, CLERK

CHARLES MULRY, LEONARD POLONSKY,  
IRVIN FISHMAN, LAWRENCE LEE,  
CARMEN YUPPA and ROBERT BARRETT,

Appellants,

vs.

WILLIAM DRIVER, Administrator of the  
Veterans Administration, et al.,

Appellees.

Appeal from the United States District Court,  
Southern District of California, Central  
Division

*Petition for Rehearing*

ABRAHAM GORENFIELD  
1258 West First Street  
Los Angeles, Calif. 90026  
MADison 6-6272  
Attorney for Appellants



NO. 20514

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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IRVIN FISHMAN, LAWRENCE LEE,  
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PETITION FOR REHEARING

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The Appellants above-named respectfully petition this  
Honorable Court for a rehearing of the appeal in the above-  
entitled cause, and in support of this petition, represent  
to the Court as follows:



1. By reason of the ruling of the trial court that it lacked jurisdiction of this action, Appellants were denied an opportunity to offer evidence as to the substantive issues. Because of the absence of evidence, there has been a clear misapprehension of crucial facts by your Court.

Thus, in the printed opinion, this Court takes judicial notice, in effect, of a condition which does not exist. The opinion states that:

"(3) If a doctor resident is away at some other hospital in the midst of performing an appendectomy upon a private patient, he is not available for immediate attention to a critical case in the Veterans Hospital." (p. 9)

If evidence had been received, it would have been proved that this could not happen. The hospital administration has approved an O.D. Rotation Roster, so that each night only three resident physicians (out of approximately 110), plus one alternate and one staff physician, are required to staff the hospital and furnish around the clock care for patients from 4:30 p.m. to 8:00 a.m.



This procedure, approved by the Veterans Administration, negatives the assumption that there is a rational basis for the regulation. The current practice at the hospital is inconsistent with the regulation.

2. The Court's opinion indicates that Appellants are not in training status (p. 6), but additional clarification is necessary. Appellants alleged that they were appointed pursuant to Title 38, U.S.C., Section 4114 (T. p. 3, l. 30). Said section authorizes the Administrator to employ residents on a temporary full-time or part-time basis [4114(a)(1)(A)]. It also authorizes him to establish (permanent?) residencies [4114(b)], and to establish the terms of pay.

Is there a distinction between residencies established under Section 4114(a)(1)(A) and those under Section 4114(b) with respect to being in training status?

3. The Court's opinion (footnote 5, p. 5) indicates that Appellants may be entitled to the Statutory pay scales set forth in Section 4107, Title 38, U.S.C., ignoring the declaration of that section to the effect that

conducting  $\mu$  molar concentration of PEG-  
NH<sub>2</sub> under the conditions with constant pH and  
temperature and the effect of various salts with different valencies  
conducted by using Ammonium Chloride and NH<sub>4</sub>

Cl<sub>4</sub> were also conducted at pH = 7 and pH = 12.  
The results are shown below plotted as the ion valency  
and salt concentration against the viscosity coefficient of  
the solution at pH = 7 and pH = 12. As shown in Fig. 1 and  
Fig. 2, the viscosity coefficient of the solution at pH = 7 and  
pH = 12 increases with increasing salt concentration. At pH = 7, the  
viscosity coefficient of the solution at pH = 7 and pH = 12 is  
almost same. At pH = 12, however, the viscosity coefficient of the  
solution at pH = 12 is higher than that at pH = 7. This  
is due to the fact that the viscosity coefficient of the  
solution at pH = 12 is higher than that at pH = 7.

Consequently, the viscosity coefficient of the solution  
at pH = 12 is higher than that at pH = 7. This  
is due to the fact that the viscosity coefficient of the  
solution at pH = 12 is higher than that at pH = 7.

As a result, the viscosity coefficient of the solution  
at pH = 12 is higher than that at pH = 7. This  
is due to the fact that the viscosity coefficient of the  
solution at pH = 12 is higher than that at pH = 7.

these scales are applicable only to appointments under  
Section 4103.

4. Before this appeal may properly be disposed of, Appellants urge this Court to determine whether they are entitled to the coverage of Sections 911 to 922 and 944 of Title 5, U.S.C. If, in fact, they are excluded from such coverage, have Appellants been deprived of constitutional rights as alleged in the Complaint? (T. p. 7, l. 30 - p. 8, l. 5.) Appellants sought declaratory relief as to this issue (T. p. 11, ll. 5 - 13), but the question remains undetermined. Appellants urge this Court to decide the issue or to remand the case with appropriate direction.

For the foregoing reasons, this petition for rehearing should be granted.

Respectfully submitted,  
ABRAHAM GORENFELD  
Attorney for Appellants

2000-2001, compared to 1999-2000. However, given the significant increase in the number of students in the 2000-2001 school year, the per student cost was lower than the previous year.

The total amount spent on grants and gifts increased by 2% from the previous year. By increasing the amount of time spent on the annual gift campaign, the School Foundation was able to raise more funds than the previous year. However, this 2000-2001 grant amount was still less than the 1999-2000 amount. This grant amount will be used to support the school's annual Christmas program, which includes a gift exchange, a dinner, a movie, and a small craft fair. Several people contributed to the success of this year's program, including the Foundation, the PTA, the faculty, and the parents.

Other off-budget gifts came from the Foundation and the

parents in the form of

fundraising efforts.

Financial analysis

and costs per student

CERTIFICATE OF COUNSEL

STATE OF CALIFORNIA                                  }  
County of Los Angeles                                  } ss.  
    )

ABRAHAM GORENFELD, being first duly sworn, on oath,  
certifies and says:

That he is attorney for the Appellants in this cause;  
that he makes this Certificate in compliance with Rule 23  
of the Rules of this Court; that in his judgment, the within  
and foregoing petition for rehearing is well founded and is  
not interposed for delay.

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ABRAHAM GORENFELD

Subscribed and sworn to before me  
this        day of October, 1966.

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Notary Public in and for  
the State of California.

JOURNAL OF WADING

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AND RIVER FISHES

the 1990s, the water level has been rising steadily, especially during the winter months.

The greatest abundance and size increments for all four species were observed at the highest water levels (Table 1). The mean total length of all four species increased from 1990 to 1994, except for the brown trout which decreased slightly. The mean total length of the brown trout increased from 1990 to 1994, while the mean total length of the other three species decreased.

#### DISCUSSION

The results of this study have demonstrated that the mean total length of all four species increased during the period 1990–1994, except for the brown trout which decreased slightly. The mean total length of the brown trout increased from 1990 to 1994, while the mean total length of the other three species decreased.

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J. L. GARCIA-RODRIGUEZ,  
M. A. GARCIA-RODRIGUEZ,  
A. M. GARCIA-RODRIGUEZ,  
AND J. M. GARCIA-RODRIGUEZ

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA                         )  
   )  
County of Los Angeles                         )

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen and not a party to the within action or proceeding; that

My business address is 215 West Fifth Street, Los Angeles, California 90013, that on October , 1966, I served the within PETITION FOR REHEARING (Mulry v. Driver - No. 20514) on the following named party, by depositing 3 copies thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Los Angeles, California, addressed to said party at the address as follows:

Honorable John W. Douglas  
Assistant Attorney General  
Civil Division  
U. S. Department of Justice  
Washington, D. C. 20530  
Attention: M. Hollander, Chief  
Appellate Section

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October , 1966, at Los Angeles, California.

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D. A. Standefer

Subscribed and sworn to before me  
this                      day of October, 1966.

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Notary Public in and for  
the State of California

Orig & 20 copies: Clerk, U.S. Court of Appeals, Ninth Circuit  
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is about 0.05. This is also similar to the correlation coefficient between the average temperature difference and the corresponding precipitation difference. The general results are consistent with those obtained by Chen et al. (2000).

Figure 10 illustrates the correlation coefficients between the annual mean precipitation and the annual mean temperature for each month. The correlation coefficients are positive for all months except January, February, and March. The correlation coefficients for the months of April, May, June, July, August, September, October, November, December, and January are positive and significant at the 95% confidence level. The correlation coefficients for the months of February, March, and April are negative and significant at the 95% confidence level. The correlation coefficients for the months of May, June, July, August, September, October, November, December, and January are positive and significant at the 90% confidence level.

Table 1 shows the correlation coefficients between the annual mean precipitation and the annual mean temperature for each month. The correlation coefficients are positive for all months except January, February, and March. The correlation coefficients for the months of April, May, June, July, August, September, October, November, December, and January are positive and significant at the 95% confidence level. The correlation coefficients for the months of February, March, and April are negative and significant at the 95% confidence level. The correlation coefficients for the months of May, June, July, August, September, October, November, December, and January are positive and significant at the 90% confidence level.

The annual mean precipitation and the annual mean temperature are positively correlated. The correlation coefficients are positive for all months except January, February, and March. The correlation coefficients for the months of April, May, June, July, August, September, October, November, December, and January are positive and significant at the 95% confidence level. The correlation coefficients for the months of February, March, and April are negative and significant at the 95% confidence level.

#### 4. Summary

This study has examined the relationship between the annual mean precipitation and the annual mean temperature in the Gobi Desert.

The results show that the annual mean precipitation and the annual mean temperature are positively correlated.

The results of this study indicate that the annual mean precipitation and the annual mean temperature are positively correlated. The correlation coefficients are positive for all months except January, February, and March. The correlation coefficients for the months of April, May, June, July, August, September, October, November, December, and January are positive and significant at the 95% confidence level. The correlation coefficients for the months of February, March, and April are negative and significant at the 95% confidence level.